

★ SPRING MEETING ★

CELEBRATING OUR 50TH YEAR
NASHVILLE ★ TENNESSEE

Inside this issue :

NCOIL Annual Meeting Recap P.1

Bilateral Agreement P.1

Capital Corner P.2

ERISA P.4

NCOIL Spring Meeting
March 15th—17th
Nashville, TN[Click Here to Register](#)**NCOIL CONCLUDES SUCCESSFUL 2018 ANNUAL MEETING IN OKLAHOMA CITY**

NCOIL concluded a successful 2018 Annual Meeting in Oklahoma City from December 5th – 8th at the Renaissance Oklahoma City. There were 271 participants, 40 legislators, 7 first-time legislators, 5 insurance commissioners, and 9 insurance departments represented.

“This has been a truly remarkable year to be NCOIL President” said AR Sen. Jason Rapert, who concluded his term as NCOIL’s President at the Annual Meeting’s conclusion. “I am grateful for the support and assistance of NCOIL legislators over this past year. Further, I am proud that the PBM Model Law I sponsored has passed after a year of discussion and negotiation. I will be strongly advocating for its introduction and passage in the states.”

The packed agenda was highlighted by the passage of the NCOIL Pharmacy Benefits Manager Licensure and Regulation Model Act by the NCOIL Health, Long Term Care and Health Retirement Issues Committee, sponsored by AR Sen. Jason Rapert. The model was affirmed by the Executive Committee.

The Financial Services Committee passed two resolutions, the first in Support of State Regulated Health Savings Account-Based Coverage sponsored by KY Rep. Steve Riggs, NCOIL Past President, and ND Sen. Jerry Klein. The second resolution titled: Asserting McCarran-Ferguson Reverse Preemption over the Supervision of Insurance Companies by the Federal Reserve Board

*Con’d on Page 3***NCOIL PRESIDENT AND CEO STATEMENT ON BILATERAL AGREEMENT BETWEEN U.S. AND U.K.**

LA Sen. Dan “Blade” Morrish, NCOIL President and Commissioner Tom Considine, NCOIL CEO issued the following statement regarding the Covered Agreement announcement by the U.S. Treasury Department and Office of US Trade Representative:

“While we remain opposed to the manner in which the original covered agreement was agreed to with the exclusion of state legislators and the collateral requirements it is only fair that the U.K. is not penalized for leaving the European Union. We remain committed to state based regulation of insurance and urge a policy statement that makes that certain.” Said Morrish.

“NCOIL appreciates then FIO Director Steven Dreyer for reaching out in advance of negotiations between the U.S. and U.K. on a covered agreement in anticipation of Brexit. In addition to, the lack of transparency surrounding the original negotiation process, as well as the earlier covered agreement representing an intrusion by both the federal government and international regulatory authorities into the U.S. state-based regulation of insurance, NCOIL opposed the U.S.-E.U. covered *Con’d on Page 2.*”

Sen. Dan “Blade” Morrish, LA
PresidentThomas B. Considine
NCOIL CEORep. Matt Lehman, IN
Vice President



Asm. Ken Cooley, CA
Treasurer



Asm. Kevin Cahill, NY
Secretary



Sen. Jason Rapert, AR
Immediate Past President



Rep. Steve Riggs, KY
Immediate Past President

Capital

o By Will Melofchik – Legislative Director – NCOIL Support Services

r Greetings –

n Welcome to the latest installment of Capital Corner, a column that aims to update you on some of the issues that NCOIL is following. 2018 was an extremely interesting and busy year for NCOIL. Given the ever-evolving nature of the insurance and financial services industries, 2019 will certainly not leave public policymakers wanting for interesting issues to wrestle with in their respective states. Below are a few issues that NCOIL will be monitoring and discussing throughout 2019.

Insurance Industry Hopeful that U.S.-U.K. Covered Agreement will Mirror Agreement Signed with EU in 2017

When the covered agreement was signed between the U.S. and EU in September of last year, the focus naturally shifted towards implementation of the agreement. Now, however, the focus has shifted to the recent announcement from the U.S. Treasury (Treasury) and U.S. Trade Representative's office (USTR) that they intend to sign a new covered agreement with the U.K. in anticipation of Brexit.

When the phrase "another covered agreement" flashed across cell phones and computers approximately two months ago of Treasury's intention to sign a U.S.-U.K. covered agreement, I am sure many opponents of the EU covered agreement rolled their eyes and were less than enthused. As you may know, NCOIL opposed the U.S.-E.U. covered agreement mainly because of its provisions relating to the elimination of collateral requirements. However, as NCOIL President Sen. Dan "Blade" Morrish (LA) and NCOIL CEO Commissioner Tom Considine have stated, it is only fair that the U.K. is not penalized for leaving the EU, particularly since the U.K. is the world's fourth-largest insurance market and many U.S. insurers and reinsurers do business in the U.K. Therefore, legislative and regulatory certainty is important and disruption in the industry should be avoided in an overall effort to ensure that policyholders are continuously protected. Additionally, all indications point to the scenario of it mirroring the U.S.-EU covered agreement thereby creating no surprises.

An important issue to consider is whether the U.S.-U.K. covered agreement will have any impact on the National Association of Insurance Commissioner's (NAIC) efforts to amend their Credit for Reinsurance Model Law and Regulation in order to incorporate the relevant provisions of the U.S.-EU covered agreement. If those models, and the state laws that reflect the models, are not amended to reflect the terms of the U.S.-EU covered agreement within five (5) years of the agreement being signed, such state laws shall be preempted. See 31 U.S.C. § 313(f).

The NAIC and stakeholders are hard at work to ensure preemption of state law does not occur, and NCOIL is hopeful that the U.S.-U.K. covered agreement will not hamper those efforts in any way. NCOIL will continue to diligently monitor these issues and will surely be discussing them at the 2019 NCOIL Spring Meeting in Nashville during the traditional and always productive NCOIL-NAIC Dialogue. *Con'd on Page 5.*

BILATERAL AGREEMENT BETWEEN U.S. AND U.K. con'd

agreement mainly because of its provisions relating to the elimination of collateral requirements. The agreement was a win for Wall Street at the expense of Main Street because companies that do not have the market presence to demand collateral contractually lost their statutory authority" stated Considine.

"Nevertheless, NCOIL understands and agrees that the UK should not be disadvantaged vis-à-vis the EU, and while NCOIL does not favor the elimination of collateral, we understand the need for a substantially similar covered agreement with the UK." Considine concluded.

NCOIL ANNUAL MEETING Con'd

and its Examiners, was sponsored by LA Sen. Dan “Blade” Morrish, who was elected NCOIL President later in the Meeting. Both measures passed on a voice vote without opposition and were affirmed by the Executive Committee.

“In my final NCOIL meeting as a legislator, I am proud to sponsor a resolution that makes health insurance more affordable for consumers” stated KY Rep. Steve Riggs, NCOIL Immediate Past President, who did not seek re-election and is retiring at the end of his term.

“We encourage state legislators to adopt a provision of their state statutes exempting HSA-qualified insurance plans because it allows the consumers health care dollar to go further” stated ND Sen. Jerry Klein, co-sponsor of the resolution.

“Thank you to the wonderful host committee and to Oklahoma City for being a great host city. Even the threat of winter weather that barely materialized could not stop our progress” stated Commissioner Tom Considine, NCOIL CEO. “As NCOIL enters its 50th year, I am proud that the organization has reasserted relevance with the passage of timely Model Laws and Resolutions and has engaged in meaningful dialogues with our federal counterparts in both the Congress and the Executive Branch. The participants at the Annual Meeting bear that out.”

The Nominating Committee selected NY Assemblyman Kevin Cahill to serve as Secretary, the first step in the NCOIL Officer ranks. The other officers were elected to the next chair in the sequence: CA Asm. Ken Cooley moved up to Treasurer, IN Rep. Matt Lehman moved up to Vice President and LA Sen. Dan “Blade” Morrish moved up and will serve as President. Outgoing President AR Sen. Jason Rapert will serve as Immediate Past President along with IN Sen. Travis Holdman.

“In my final year in the legislature, I am proud to serve as President of NCOIL” said LA Sen. Blade Morrish, NCOIL President. “I plan to speak to as many organizations over the course of the next year to highlight the positive impact NCOIL has on insurance and financial services public policy. Further, we will soon be announcing a few programs designed to educate legislators, staff and the general public about insurance that will further enhance what NCOIL mission.”

At the all-attendee Welcome Breakfast, the assembled group heard from Oklahoma Governor Mary Fallin who discussed Oklahoma’s economic growth over the past eight years, and University of Minnesota Law School Professor Daniel Schwarcz who presented his Law Review Article titled: “Is U.S. Insurance Regulation Unconstitutional?”.

Former Oklahoma Governor Frank Keating delivered the keynote luncheon address on Friday. In addition to his service as Oklahoma’s chief executive, he has had an exceptional career including service as the former Associate Attorney General of the United States, former CEO of the American Council of Life Insurers (ACLI) and former CEO of the American Bankers Association (ABA). During a warm and well-received address, Governor Keating discussed the need for pragmatism in governmental decision making.

There were other interesting and timely speakers including Dr. Daniel Kaniewski, Deputy Administrator, Resilience, Federal Emergency Management Association (FEMA); Randy Pate, Director of the Center for Consumer Information and Insurance Oversight (CCIO), and Deputy Administrator, Centers for Medicare and Medicaid Services (CMS); Michael McRaith, former Director of the Federal Insurance Office (FIO), and former Director of the Illinois Department of Insurance; and, Nat Shapo, who preceded McRaith as Illinois Insurance Director.

Three general sessions were held to educate legislators and participants including:

- 1) Examining the Role of ERISA in the State Based System of Insurance Regulation: Can Meaningful State Reforms be Achieved in an ERISA-Dominated Marketplace?
- 2) Reverse Preemption – Can States Preempt Federal Insurance Laws and Regulations through use of the McCarran-Ferguson Act?
- 3) Understanding InsurTech and FinTech – What Legislators and Regulators Can do to Promote Innovation in the Insurance and Financial Services Industries. *Con'd on Page 4*

NCOIL ANNUAL MEETING Con'd



Sen. Travis Holdman (IN); Rep. Steve Riggs (KY); Asm. Kevin Cahill (NY); Sen. Jason Rapert (AR); Sen. Dan "Blade" Morrish (LA); Rep. Matt Lehman (IN); Asm. Ken Cooley (CA); Cmsr. Tom Considine

The Property & Casualty Insurance Committee re-adopted the State Flood Disaster Mitigation and Relief Model Act. It is expected that amendments to this model, which serve to facilitate the expansion of the private flood insurance market will be discussed throughout 2019. Also discussed during this committee was the plan to develop model legislation in response to the American Law Institute's (ALI's) Restatement of the Law of Liability Insurance, and an update on the National Flood Insurance Program (NFIP) and private flood insurance market.

The Workers' Compensation Insurance Committee adopted amendments to the NCOIL Model Act on Workers' Compensation Repackaged Pharmaceutical Reimbursement Rates that deal with physician dispensing practices and drug compounding. The amendments passed on a voice vote without opposition and were affirmed by the Executive Committee.

Sen. Dan "Blade" Morrish (LA) and Rep. Tom Oliverson, M.D. (TX) - Vice Chair of the Health and Long Term Care Issues Committee introduced a Model Law Framework focusing on drug pricing transparency and expect to further develop the framework throughout 2019 for consideration and final adoption.

Minutes for the Annual Meeting will be posted in the next two weeks.

The 2019 NCOIL Spring Meeting will be in Nashville, TN from March 14th – 17th at the Sheraton Grand Nashville Downtown. Registration will open before 2019. Please visit ncoil.org for more information.

Policymakers Learn About ERISA and Impact on Community Pharmacies and Pharmacy Benefits Managers

Last month, nearly one hundred policymakers participated in a webinar hosted by The Institutes Griffith Insurance Education Foundation, in collaboration with the National Council of Insurance Legislators (NCOIL) on ERISA. The title was Understanding ERISA and Its Impact on Community Pharmacies and Pharmacy Benefit Managers: A Non-Advocative, Non-Partisan Primer Program

"As is consistent with NCOIL's mission, we educate policymakers, so they can enact meaningful legislation" said Commissioner Tom Considine, NCOIL CEO. "NCOIL is proud of our decades long partnership with the Institutes Griffith Insurance Education Foundation and has borne policy fruit again and again."

The Employment Retirement Income Security Act (ERISA) has had a tremendous impact on the state-based system of insurance regulation since it was signed into law in 1974. ERISA matters can arise in various settings, each of which present their own unique set of issues. One such setting that has been garnering recent national attention has been the interaction of ERISA with the business practices of community pharmacies and pharmacy benefit managers (PBMs). This webinar will serve as a primer on how ERISA has evolved throughout the past several decades and why it is of such importance to community pharmacies and PBMs as both the states and the Federal Government wrestle with these complex issues.

"We look forward to engaging NCOIL policymakers consistent with Griffith's non-partisan, non-advocative manner" said Frank Paul Tomasello, Senior Director at The Institutes Griffith Insurance Education Foundation. "ERISA is a challenging subject and we thank the participants for taking the time to learn about it."

An academic-led overview of ERISA and its interplay with our state-based system of insurance regulation was followed by discussion of the impact of this legislation on both community pharmacies and pharmacy benefit managers from experts with different perspectives. The webinar is available for a month and can be played here – <https://tinyurl.com/ybfwkfzc> .

Capital Corner Con'd

ERISA Preemption: What did we Learn in OKC?

At the recent 2018 NCOIL Annual Meeting in Oklahoma City, a general session was held titled: “Examining the Role of ERISA in the State Based System of Insurance Regulation - Can Meaningful State Reforms be Achieved in an ERISA-Dominated Marketplace?” The session was one of the highlights of the Meeting and was led by a diverse and thoughtful group of speakers.

While all the speakers provided valuable and insightful information, Professor Elizabeth McCuskey of the University of Toledo College of Law delivered some particularly noteworthy remarks, focused on recommendations as to how states can take the lead in expanding healthcare access and regulating health insurance by means of altering the current ERISA-landscape.

Prof. McCuskey offered several options for consideration, one of which was to amend ERISA to add a waiver provision. This approach represents a compromise in that ERISA’s preemption baseline is preserved and national uniformity is the default rule, but states could seek waivers from the Department of Labor (DOL) - hopefully in consultation with the Department of Health and Human Services (HHS) - so that states can pursue experiments relating to healthcare reform.

Prof. McCuskey’s “ERISA waiver proposal” caught the attention of many of the legislators present for the session and remained a topic of discussion in smaller circles throughout the meeting. To view Prof. McCuskey’s ERISA waiver proposal in full, and her accompanying memo to the NCOIL Health Insurance and Long Term Care Issues Committee, please follow this link to the NCOIL website: <http://ncoil.org/committee-working-drafts/>

What do you think about Prof. McCuskey’s proposal? Should NCOIL stay engaged with the issues surrounding ERISA preemption throughout 2019 and use Prof. McCuskey’s proposal as a basis for crafting NCOIL policy on such issues? Interested parties are encouraged to reach out to the NCOIL National Office with any comments and/or suggestions.

NCOIL Progressing in Development of Drug Pricing Transparency Model Law

At the 2018 NCOIL Spring Meeting in Atlanta, GA, the Health Insurance and Long Term Care Issues Committee began discussions surrounding the development of a Drug Pricing Transparency Model Law. During that meeting, California SB 17 (2017) and Vermont S. 216 (2016), were offered up for consideration to use as a starting point for drafting efforts by CA Assemblyman Ken Cooley, now NCOIL Treasurer, and VT Representative Bill Botzow. However, after that meeting Rep. Botzow announced his departure from NCOIL as well as his imminent retirement from the legislature; it therefore took some time to put pen to paper and arrive at another starting point for what a framework of an NCOIL Drug Pricing Transparency Model Law should look like.

Upon working with NCOIL staff in extensively evaluating current state drug pricing transparency laws, Rep. Tom Oliverson, M.D. (TX) – Vice Chair of the NCOIL Health Insurance and Long Term Care Issues Committee – landed upon the drug pricing transparency laws that were passed in Louisiana – the home state of now NCOIL President Sen. Dan “Blade” Morrish (and co-sponsor of this Model) – as what should be used to start the Committee’s drafting discussion. However, in an effort to follow the NCOIL tradition of bi-partisanship, Rep. Oliverson and Sen. Morrish looked for another successful drug pricing transparency law from a predominantly Democratic state and accordingly decided to incorporate some language from Connecticut’s law into the draft framework.

The framework presented to the Committee seeks to shed light on drug prices and manufacture investment, the flow of manufacturer rebates and other discounts that get passed through pharmacy benefit managers (PBMs), and the impact of drugs on insurance premiums. The bi-partisan framework is a great starting point for discussion that can be built upon throughout 2019 with the result being the successful adoption of an NCOIL Drug Pricing Transparency Model Law that can be adopted by states across the country. As is always the case with NCOIL Model Law development, the process will be fair and transparent and all perspectives will have the opportunity to be heard. The framework can be viewed on the NCOIL website here: <http://ncoil.org/committee-working-drafts/> *Con'd on Page 6.*

Capital Corner Con'd

The framework will be discussed further at the NCOIL Spring Meeting in Nashville in March. Please reach out to the NCOIL National Office with any comments.

Last Mile Scooters: An Accident Waiting to Happen or a Transformation in Urban Transportation?

The “last mile” transportation issue – how individuals get from transportation hubs such as subway stops, train stations, and bus terminals – to their final destination, has involved several different ideas and branches of technology throughout the past several years. The latest development in this area has been the rising popularity of rechargeable electronic scooters.

The scooters have caught the attention of lawyers, insurers, legislators, and regulators alike. Companies such as [Bird](#) and [Lime](#) have made national headlines with their easy-to-use app-based business model. Like most new trends, reactions to the scooters have been polarizing. Supporters claim that the scooters are simply the next logical step in the transportation revolution started by Uber and Lyft and can serve a very useful purpose. However, critics contend that the scooters are an irritating “fad” primarily used by tourists and tech workers who endanger themselves and others when using them.

From an insurance aspect, the numerous questions that insurers around the country are asking that relate to the scooters are all not ready to be answered. Having realized that, and sensing that such questions were only going to get more complex the longer they remain unanswered, the NCOIL Property & Casualty Insurance Committee (Committee) started a dialogue on this topic at the recent 2018 NCOIL Annual Meeting in Oklahoma City.

The Committee heard from Ashley Scott, Policy Counsel for Lime, and Paul Martin, Regional Vice President – Southwestern Region, of the National Association of Mutual Insurance Companies (NAMIC) who offered their respective views on the scooters and how the policy conversation surrounding them should proceed.

Among other things, Ms. Scott noted that some of Lime’s goals are: insurance that comprehensively covers its business operations and riders; indemnification provisions to protect its municipal partners; serving as a partner with the insurance industry to provide a global view of the insurance landscape for the “last mile” scooter industry; and most importantly, to start a meaningful dialogue with state insurance legislators and regulators. You can view Ashley Scott’s presentation by visiting the NCOIL website here: <http://ncoil.org/wp-content/uploads/2018/12/NCOIL-Presentation-Lime.pdf>

Mr. Martin noted that despite what the perception may be, the industry is not opposed to the scooters, but there are some insurance issues that legislators and regulators need to be aware of as they consider making policy. At first glance, the insurance issues don’t seem insurmountable, but the dialogue surrounding them needs to be continued if consumers are to be protected to the fullest extent possible, particularly since the scooters are not going to “fade out” anytime soon. Legislation is expected to be introduced in certain states in 2019, and just last week, Google announced a partnership with Lime which will enable users of Google Maps to show users where they can obtain a scooter. Accordingly, the scooters certainly seem to be on their way to be a lasting feature of the urban landscape.

Is an NCOIL Model Law on these scooters necessary? A series of best practices for states to consider? Amendments to an existing Model? Please reach out to the NCOIL national office with any comments and advice as to how NCOIL can frame the policy discussion surrounding last mile scooters throughout 2019.

We hope to see you in Nashville, and hear from you in the interim

*Happy Holidays
Will*

For an extended version of Capital Corner Click [here](#)